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SENATE BILL 49

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO ETHICS; AMENDING AND ENACTING SECTIONS OF THE  
GOVERNMENTAL CONDUCT ACT TO INCLUDE PUBLIC OFFICERS AND  
EMPLOYEES OF ALL POLITICAL SUBDIVISIONS OF THE STATE;  
PROHIBITING CERTAIN ACTS BY PUBLIC OFFICERS AND EMPLOYEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-16-2 NMSA 1978 (being Laws 1967,  
Chapter 306, Section 2, as amended) is amended to read:

"10-16-2. DEFINITIONS.--As used in the Governmental  
Conduct Act:

A. "business" means a corporation, partnership,  
sole proprietorship, firm, organization or individual carrying  
on a business;

B. "confidential information" means information  
that by law or practice is not available to the public;

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1 C. "employment" means rendering of services for  
2 compensation in the form of salary as an employee;

3 D. "family" means an individual's spouse, parents,  
4 children or siblings, by consanguinity or affinity;

5 E. "financial interest" means an interest held by  
6 an individual or the individual's family that is:

7 (1) an ownership interest in business; or

8 (2) any employment or prospective employment  
9 for which negotiations have already begun;

10 F. "local government agency" means any branch,  
11 agency, instrumentality, institution or other entity of any  
12 political subdivision of the state;

13 [~~F.~~] G. "official act" means an official decision,  
14 recommendation, approval, disapproval or other action that  
15 involves the use of discretionary authority;

16 [~~G.~~] H. "public officer or employee" means any  
17 [~~person who has been elected to, appointed to or hired for any~~  
18 ~~state office and]~~ elected or appointed official or employee of  
19 a state agency or local government agency who receives  
20 compensation in the form of salary or is eligible for per diem  
21 or mileage but excludes legislators;

22 [~~H.~~] I. "standards" means the conduct required by  
23 the Governmental Conduct Act;

24 [~~I.~~] J. "state agency" means any branch, agency,  
25 instrumentality or institution of the state; and

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1           [~~J~~] K. "substantial interest" means an ownership  
2 interest that is greater than twenty percent."

3           Section 2. Section 10-16-3.1 NMSA 1978 (being Laws 2007,  
4 Chapter 362, Section 9) is amended to read:

5           "10-16-3.1. PROHIBITED POLITICAL ACTIVITIES.--~~[Public~~  
6 ~~officers and employees are]~~ A public officer or employee is  
7 prohibited from:

8           A. directly or indirectly coercing or attempting to  
9 coerce [~~a state~~] another public officer or employee to pay,  
10 lend or contribute anything of value to a party, committee,  
11 organization, agency or person for a political purpose;

12           B. threatening to deny a promotion or pay increase  
13 to an employee who does or does not vote for certain  
14 candidates, requiring an employee to contribute a percentage of  
15 the employee's pay to a political fund, influencing a  
16 subordinate employee to purchase a ticket to a political  
17 fundraising dinner or similar event, advising an employee to  
18 take part in political activity or similar activities; or

19           C. violating the officer's or employee's duty [~~to~~]  
20 not to use property [~~state~~] belonging to a state agency or  
21 local government agency, or allow its use, for other than  
22 authorized purposes."

23           Section 3. Section 10-16-4.2 NMSA 1978 (being Laws 2007,  
24 Chapter 362, Section 10) is amended to read:

25           "10-16-4.2. DISCLOSURE OF OUTSIDE EMPLOYMENT.--A public  
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1 officer or employee shall disclose in writing to the supervisor  
2 of the officer or employee, or in the event there is no  
3 supervisor, to the secretary of state, all employment engaged  
4 in by the officer or employee other than the employment with  
5 ~~[the]~~ a state agency or local government agency."

6 Section 4. Section 10-16-6 NMSA 1978 (being Laws 1967,  
7 Chapter 306, Section 6, as amended) is amended to read:

8 "10-16-6. CONFIDENTIAL INFORMATION.--No legislator,  
9 public officer or employee shall use or disclose confidential  
10 information acquired by virtue of the legislator's, public  
11 officer's or employee's ~~[state employment or office]~~ position  
12 with a state agency or local government agency for the  
13 legislator's, public officer's, employee's or another's private  
14 gain."

15 Section 5. Section 10-16-7 NMSA 1978 (being Laws 1967,  
16 Chapter 306, Section 7, as amended) is amended to read:

17 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR  
18 EMPLOYEES.--

19 A. A state agency shall not enter into a contract  
20 for services, construction or items of tangible personal  
21 property with a public officer or employee of the state, with  
22 the family of the public officer or employee or with a business  
23 in which the public officer or employee or the family of the  
24 public officer or employee has a substantial interest unless  
25 the public officer or employee has disclosed the public

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1 officer's or employee's substantial interest and unless the  
2 contract is awarded pursuant to the Procurement Code, except  
3 that the potential contractor shall not be eligible for a sole  
4 source or small purchase contract; provided that this section  
5 does not apply to a contract of official employment with the  
6 state or to contracts made pursuant to the provisions of the  
7 University Research Park and Economic Development Act. A  
8 person negotiating or executing a contract on behalf of a state  
9 agency shall exercise due diligence to ensure compliance with  
10 the provisions of this section.

11 B. A local government agency shall not enter into a  
12 contract for services, construction or items of tangible  
13 personal property with a public officer or employee of that  
14 political subdivision of the state, with the family of the  
15 public officer or employee or with a business in which the  
16 public officer or employee or the family of the public officer  
17 or employee has a substantial interest unless the public  
18 officer or employee has disclosed the public officer's or  
19 employee's substantial interest and unless the contract is  
20 awarded pursuant to the Procurement Code, except that the  
21 potential contractor shall not be eligible for a sole source or  
22 small purchase contract; provided that this section does not  
23 apply to a contract of official employment with the political  
24 subdivision or to contracts made pursuant to the provisions of  
25 the University Research and Economic Development Park Act. A

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1 person negotiating or executing a contract on behalf of a local  
2 government agency shall exercise due diligence to ensure  
3 compliance with the provisions of this section."

4 Section 6. Section 10-16-8 NMSA 1978 (being Laws 1967,  
5 Chapter 306, Section 8, as amended) is amended to read:

6 "10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR  
7 EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT  
8 SERVICE.--

9 A. A state agency shall not enter into a contract  
10 with, or take any action favorably affecting, any person or  
11 business that is:

12 (1) represented personally in the matter by a  
13 person who has been a public officer or employee of the state  
14 within the preceding year if the value of the contract or  
15 action is in excess of one thousand dollars (\$1,000) and the  
16 contract is a direct result of an official act by the public  
17 officer or employee; or

18 (2) assisted in the transaction by a former  
19 public officer or employee of the state whose official act,  
20 while in state employment, directly resulted in the agency's  
21 making that contract or taking that action.

22 B. A local government agency shall not enter into a  
23 contract with, or take any action favorably affecting, any  
24 person or business that is:

25 (1) represented personally in the matter by a

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1 person who has been a public officer or employee of that  
2 political subdivision of the state within the preceding year if  
3 the value of the contract or action is in excess of one  
4 thousand dollars (\$1,000) and the contract is a direct result  
5 of an official act by the public officer or employee; or

6 (2) assisted in the transaction by a former  
7 public officer or employee of that political subdivision of the  
8 state whose official act, while in employment with that  
9 political subdivision of the state, directly resulted in the  
10 agency's making that contract or taking that action.

11 [B-] C. A former public officer or employee shall  
12 not represent a person in [his] the person's dealings with the  
13 government on a matter in which the former public officer or  
14 employee participated personally and substantially while a  
15 public officer or employee.

16 [G-] D. For a period of one year after leaving  
17 government service or employment, a former public officer or  
18 employee shall not represent for pay a person before the state  
19 agency or local government agency at which the former public  
20 officer or employee served or worked."

21 Section 7. Section 10-16-13 NMSA 1978 (being Laws 1967,  
22 Chapter 306, Section 13, as amended) is amended to read:

23 "10-16-13. PROHIBITED BIDDING.--No state agency or  
24 [~~political subdivision of the state~~] local government agency  
25 shall accept a bid or proposal from a person who directly

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1 participated in the preparation of specifications,  
2 qualifications or evaluation criteria on which the specific  
3 competitive bid or proposal was based. A person accepting a  
4 bid or proposal on behalf of a state agency or ~~[political~~  
5 ~~subdivision of this state]~~ local government agency shall  
6 exercise due diligence to ensure compliance with this section."

7 Section 8. Section 10-16-13.1 NMSA 1978 (being Laws 1993,  
8 Chapter 46, Section 35) is amended to read:

9 "10-16-13.1. EDUCATION AND VOLUNTARY COMPLIANCE.--

10 A. The secretary of state and the attorney general  
11 shall advise and seek to educate all persons required to  
12 perform duties under the Governmental Conduct Act of those  
13 duties. This includes advising all those persons at least  
14 annually of that act's ethical principles.

15 B. The secretary of state shall seek first to  
16 ensure voluntary compliance with the provisions of the  
17 Governmental Conduct Act. A person who violates that act  
18 unintentionally or for good cause shall be given ten days'  
19 notice to correct the matter. Referrals for civil enforcement  
20 of that act shall be pursued only after efforts to secure  
21 voluntary compliance with that act have failed."

22 Section 9. Section 10-16-13.2 NMSA 1978 (being Laws 2007,  
23 Chapter 362, Section 8) is amended to read:

24 "10-16-13.2. CERTAIN BUSINESS SALES TO STATE AGENCIES,  
25 LOCAL GOVERNMENT AGENCIES AND THEIR EMPLOYEES PROHIBITED.--

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1           A. A public officer or employee shall not sell or  
2 be a party to a transaction to sell goods, services,  
3 construction or items of tangible personal property directly or  
4 indirectly, through the public officer's or employee's family  
5 or a business in which the public officer or employee has a  
6 substantial interest, to the state agency or local government  
7 agency with which the public officer or employee is employed.  
8 It is not a violation of this subsection if the public officer  
9 or employee employed by the state agency or local government  
10 agency in good faith is not aware of:

11                   (1) the substantial interest held by the  
12 public officer or employee or the public officer's or  
13 employee's family in the business that is selling or engaged in  
14 a transaction to sell goods, services, construction or items of  
15 tangible personal property to the state agency or local  
16 government agency by which the public officer or employee is  
17 employed; or

18                   (2) the sale of or the transaction to sell  
19 goods, services, construction or items of tangible personal  
20 property by the public officer's or employee's family or by a  
21 business in which the public officer or employee or the public  
22 officer's or employee's family has a substantial interest to  
23 the state agency or local government agency by which the public  
24 officer or employee is employed.

25           B. A public officer or employee shall not sell,

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1 offer to sell, coerce the sale of or be a party to a  
2 transaction to sell goods, services, construction or items of  
3 tangible personal property, directly or indirectly through the  
4 public officer's or employee's family or a business in which  
5 the public officer or employee has a substantial interest, to  
6 an employee supervised by the public officer or employee. A  
7 public officer or employee shall not receive a commission or  
8 shall not profit from the sale or a transaction to sell goods,  
9 services, construction or items of tangible personal property  
10 to an employee supervised by the public officer or employee.  
11 The provisions of this subsection shall not apply if the  
12 supervised employee initiates the sale. It is not a violation  
13 of this subsection if a public officer or employee, in good  
14 faith, is not aware that the employee to whom the goods,  
15 services, construction or items of tangible personal property  
16 are being sold is under the supervision of the public officer  
17 or employee.

18 C. A public officer or employee shall not sell,  
19 offer to sell, coerce the sale of or be a party to a  
20 transaction to sell goods, services, construction or items of  
21 tangible personal property, directly or indirectly through the  
22 public officer's or employee's family or a business in which  
23 the public officer or employee has a substantial interest, to a  
24 person over whom the public officer or employee has regulatory  
25 authority.

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1           D. A public officer or employee shall not receive a  
2 commission or shall not profit from the sale or a transaction  
3 to sell goods, services, construction or items of tangible  
4 personal property to a person over whom the public officer or  
5 employee has regulatory authority.

6           E. A public officer or employee shall not accept  
7 from a person over whom the public officer or employee has  
8 regulatory authority an offer of employment or an offer of a  
9 contract in which the public officer or employee provides  
10 goods, services, construction, items of tangible personal  
11 property or other things of value to the person over whom the  
12 public officer or employee has regulatory authority."

13           Section 10. Section 10-16-13.3 NMSA 1978 (being Laws  
14 2007, Chapter 362, Section 11) is amended to read:

15           "10-16-13.3. PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE  
16 CONTRACTORS.--

17           A. A business that contracts with a state agency or  
18 local government agency to provide financial services involving  
19 the investment of public money or issuance of bonds for public  
20 projects shall not knowingly contribute anything of value to a  
21 public officer or employee of that state agency or local  
22 government agency who has authority over the investment of  
23 public money or issuance of bonds, the revenue of which is used  
24 for public projects in the state.

25           B. A public officer or employee of a state agency

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1 or local government agency that has authority over the  
2 investment of public money or issuance of bonds, the revenue of  
3 which is used for public projects in the state, shall not  
4 knowingly accept a contribution of anything of value from a  
5 business that contracts with that state agency or local  
6 government agency to provide financial services involving the  
7 investment of public money or issuance of bonds for public  
8 projects.

9 C. For the purposes of this section:

10 (1) "anything of value" means any money,  
11 property, service, loan or promise, but does not include food  
12 and refreshments with a value of less than one hundred dollars  
13 (\$100) consumed in a day; and

14 (2) "contribution" means a donation or  
15 transfer to a recipient for the personal use of the recipient,  
16 without commensurate consideration."

17 Section 11. A new section of the Governmental Conduct Act  
18 is enacted to read:

19 "[NEW MATERIAL] LOCAL GOVERNMENT AGENCY AUTHORITY.--  
20 Nothing in the Governmental Conduct Act shall be construed to  
21 preclude a local government agency from adopting laws,  
22 ordinances, rules or standards that are more stringent than  
23 those required by the Governmental Conduct Act."

24 Section 12. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 2009.

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